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SERVICE DATE – MAY 4, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 726

ON-TIME PERFORMANCE UNDER SECTION 213 OF THE PASSENGER RAIL INVESTMENT AND IMPROVEMENT ACT OF 2008

AGENCY: Surface Transportation Board.

ACTION: Final Rule; removal.

SUMMARY: The Surface Transportation Board (Board) is removing its final rule concerning on-time performance of intercity passenger rail service because it was invalidated upon judicial review.

EFFECTIVE DATE: May 4, 2018.

FOR FURTHER INFORMATION CONTACT: Scott M. Zimmerman: (202) 245-0386.
Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877-8339.

SUPPLEMENTARY INFORMATION: On May 15, 2015, the Board instituted a rulemaking proceeding in this docket to define “on-time performance” for intercity passenger trains for purposes of Section 213 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), 49 U.S.C. § 24308(f). See 80 Fed. Reg. 28,928. The Board adopted its final rule in 49 C.F.R. part 1040 on July 28, 2016, and the rule took effect on August 27, 2016. See 81 Fed. Reg. 51,343.

Petitions for judicial review of the final rule were filed in the U.S. Courts of Appeals for the Eighth Circuit and the District of Columbia Circuit, and were ultimately consolidated in the Eighth Circuit. The Court of Appeals found that the Board lacked authority to promulgate a final rule defining on-time performance under PRIIA and vacated the Board’s rule. See Union Pac. R.R. v. Surface Transp. Bd., 863 F.3d 816 (8th Cir. 2017). The National Railroad Passenger Corporation (Amtrak) and certain passenger organizations filed petitions for certiorari with the U.S. Supreme Court, which declined to review the Eighth Circuit’s ruling.

The Board’s rule is therefore invalid and 49 C.F.R. part 1040 will be removed. Because this action is based on a final court determination that the rule being eliminated is invalid, the Board finds good cause to dispense with notice and comment under the Administrative Procedure Act (APA). See 5 U.S.C. § 553(b)(B).

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. §§ 601-612, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because the Board has determined that notice and comment are not required under the APA for this rulemaking, the requirements of the RFA do not apply.

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501-3521.

List of Subjects

49 C.F.R. pt. 1040

Mass transportation, Railroads.

It is ordered:

1. Part 1040 is removed and notice will be published in the Federal Register.
2. This decision is effective on May 4, 2018.

Decided: April 30, 2018.

By the Board, Board Members Begeman and Miller.

APPENDIX

PART 1040 [REMOVED AND RESERVED]

For the reasons set forth in the preamble, and under the authority of 49 U.S.C. § 1321(a), the Surface Transportation Board removes and reserves 49 CFR part 1040.